

III. REMARKS

1. Claims 1, 2, 4, 6, 20, 21, 23, and 25 are amended. Claims 8 and 27 are cancelled without prejudice. Claims 36-43 are new.
2. The Office Action, in the Section regarding the 35 U.S.C. §103(a) rejection, cites the reference "Here". However, no citation number is given and the reference does not appear on the PTO-892 or 1449 form. Despite numerous telephone calls to the Examiner to clarify what this reference is, the Examiner did not call back.

However, in an IDS submitted by the applicant, the reference "Heie", EP 1014674 A1 was disclosed to the USPTO. A reading of the Examiner's comments seems to indicate that Heie is the reference the Examiner intended to refer to, and that the office action contains typographical errors. If Heie is not the proper reference, a new action is solicited citing the proper reference.
3. Claims 1-8, 10-14, 16-27, 29-30 and 33-35 are not anticipated by Gershkovich under 35 U.S.C. §102(b). Applicant's invention according to claim 1 recites that the control means automatically adjusts tone features including at least one of a tone frequency and tone duration. This is not disclosed or suggested by Gershkovich. Gershkovich discloses a radiotelephone that operates in two modes: in an interconnect mode as a normal radiotelephone, wherein the user listens to call with the phone, and in a dispatch mode used typically in official networks, wherein the user can

hold the phone in his/her hand or on his/her belt and listen to the call through a loudspeaker or ear piece.

Gershkovich identifies as a problem that in the dispatch mode, the volume must be considerably higher than in the interconnect mode. Errors in volume control may even cause hearing impairments. Gershkovich describes two separate solutions to the problem.

In the first version, the phone has a separate earpiece (reference number 38 in figure 2) and loudspeaker (reference number 40 in Figure 2). It should be noted that the loudspeaker is located as far away from the earpiece as possible. When the phone is held in the hand or in a belt case, the messages of the dispatch mode or the alarm in the interconnect-mode call or starts an interconnect-mode call, the person presses a specific button (answer/send), after which sounds are only reproduced through the earpiece. Volume is naturally adjusted to suit both modes: the volume through the earpiece in the interconnect mode can be considerably louder, because it is then not necessary to hold the phone close to the ear.

The second version describes a radiotelephone that again operates in two modes. Control logic 70, 72 controls the volume coming through an earpiece/loudspeaker 82. Information on which of the modes is currently used can be received as a signal from the network. The control logic 70, 72 controls an adjustable power amplifier 76 to obtain the desired volume. The user can also manually adjust the operation of the adjustable power amplifier 76 by using a keyboard 92, for instance. Column 9, lines 38 to 40 state as follows: "It will be appreciated that the human ear

adapts to current ambient noise surroundings in as much as ambient noise is, to some extent, filtered out." That is, volume control is considered to be the problem. Further, the end of column 9 and the beginning of column 10 state the background noise can be monitored with a microphone 84. After this, the control logic 72 sets a suitable amplification for the adjustable power amplifier 76 so that sound from the earpiece/loudspeaker 82 carries over the background noise.

Gershkovich does not automatically adjusting at least one of a tone frequency and tone duration. Rather Gershkovich, in accordance with a preset and predetermined routine, audio ramps either the voice signal or client tone 78. (Col. 8, lines 11-14). The gain of the amplifier is adjusted through a number of discrete gain settings to an ultimate gain. (Col. 8, lines 14-19). The increase in gain between adjacent settings is 2dB, (Col. 8, Lines 22-24). The user inputs the desired level for the ultimate acoustic output. (Col. 8, lines 42-44). Essentially, all the Gershkovich is doing is to slowly increase the volume or loudness of the alert signal from an initial level, which can depend on background noise, to a maximum level. This is not the same as what is claimed by Applicant. In Applicant's invention, we adjust a feature of the tone to distinguish the tone from the background noise. Applicant's invention does not simply deal with the "loudness" of the background noise or tone. Rather, Applicant's invention is directed to making sure that any masking effect caused by the background noise does not mask out the tone signal. Simply making the tone louder over a range of preset increments as done in Gershkovich is not what is claimed and described in Applicant's invention.

Although Gershkovich monitors the ambient noise level (Col.9, lines 57-59), Gershkovich only adapts an initial gain setting to ensure that the annunciation will be communicated to a user, as the gain level is increased in the predetermined increments up to a maximum level. Applicant's invention, as recited for example in claim 1, adjusts at least one of a tone feature, tone frequency or tone duration. Thus, at least this feature is not disclosed or suggested.

Thus the claims cannot be anticipated.

Claims 17, 20 and 34 recite similar features and are also not anticipated.

Applicant respectfully disagrees with the Examiner's statement that "it is inherent that it is at different frequencies", on page 2 of the action, and requests the examiner to provide proof of same.

Claim 3 recites that the determining means are arranged to determine the volume of background noise at different frequencies. Gershkovich does not disclose this. All that Gershkovich discusses is determining a volume of the background noise so the initial volume of the alert tone can be set as it ramps upward. Gershkovich does not discuss determining a frequency of the background noise, and any such determination is not necessarily inherent.

Claim 3 also recites that the control means produce a tone at frequencies where the volume of the background noise is low. Gershkovich does not disclose or suggest producing a tone at a different frequency when the volume of the

background noise is low. Thus, claim 3, and claim 22 which recites similar features, cannot be anticipated.

Claim 7 recites determining a moment when a sudden background noise of short duration occurs. Gershkovich only discusses determining a loudness of the background noise, not the duration. Claim 7 recites producing a tone "nonsimultaneously" with the moment at which background noise occurs. Gershkovich only determines a level of the background noise and sets the alert tone to start at a certain volume and increase in increments up to the maximum. Nothing in Gershkovich suggests or discloses adjusting anything but the initial loudness level or volume and the volume slowly increases at preset intervals. Thus, claim 7, and claim 26 which recites similar subject matter, cannot be anticipated.

Claim 17 recites affecting the tone frequency and/or duration and controlling the tone production and to adjust the tone frequency and/or duration according to the control. Gershkovich does not disclose or suggest adjusting tone frequency and/or duration. Gershkovich only discusses the loudness. Thus, claim 17 cannot be anticipated.

4. Claims 9, 14, 15, 28, 31 and 32 are not unpatentable over Gershkovich in view of Heie (EP 1014674 A1) under 35 U.S.C. §103(a).

It should be noted that Heie was not published until June 28, 2000. Applicant's invention claims priority to Finnish Application No. 20001515, filed on June 26, 2000, which precedes the publication date of Heie. Heie was only first published two days later. Thus, Heie, which is commonly

owned by the assignee of the instant application, should not be available as a reference for purposes of 35 U.S.C. §103(a).

Regardless, Heie does not overcome the deficiencies of Gershkovich noted above with respect to claims 1, 17, 20 and 34. As noted above, Gershkovich does not disclose or suggest the features of the independent claims.

Heie essentially records and avoids signal and stores it in memory. (Col. 8, lines 20 to Col. 9, line 47) (Col. 10, lines 19-39). Heie stores a digital representation of the alerting signal. The processing unit 60 can divide the length of the audio signal into several parts to "reproduce the alerting signal in a way similar to the audio signal." (Abstract). Nothing in Heie suggests an ability to make the individual notes sound "longer" as recited in claim 9 or automatically selectable tone frequency ranges as recited in claim 14.

Claim 28 recites making the individual notes sound longer when background noise is getting longer. The combination of Gershkovich and Heie does not disclose or suggest this feature. Gershkovich merely suggest making the alert tone louder. Heie allows a user to store digitally virtually any sound. However, Heie does not make any mention of altering the notes to make them sound "longer". Thus, at most, all the Gershkovich in view of Heie discloses or suggests is making an custom alert tone louder to overcome background noise. Thus, claim 28 is patentable.



Since Gershkovich in view of Heie does not disclose or suggest each feature of Applicant's invention as claimed, claims 9, 14, 15, 28, 31 and 32 are not unpatentable.

A check in the amount of \$1040 is enclosed for a three-month extension of time and the additional claims fee. The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,

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